Supreme Court U.S.
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No. 02-655

In the Supreme Court of the United States

KEISHA CARTER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner correctly received consecutive sentences on two counts of using or carrying a firearm during and in relation to a drug trafficking offense, in violation of 18 U.S.C. 924(c), when both convictions were based on a single predicate drug trafficking offense.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-31) is reported at 300 F.3d 415. The decision of the district court (Pet. App. 32-39) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 30, 2002. The petition for a writ of certiorari was filed on October 28, 2002. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Eastern District of North Carolina, petitioner was convicted on two counts of using and carry-

ing a firearm during and in relation to a drug trafficking offense, in violation of 18 U.S.C. 924(c). She was sentenced to five years of imprisonment on the first count and a consecutive 20-year term of imprisonment on the second count. Pet. App. 42.[1] The court of appeals affirmed. *Id.* at 1-31.

1. Petitioner was part of a drug trafficking conspiracy operating out of the Campbell Terrace Housing Project in Fayetteville, North Carolina. During 1997, a number of individuals living in the Project or their acquaintances were involved in drug sales. Those individuals also committed robberies or other acts of violence to obtain drugs or money with which to procure additional drugs for resale. Pet. App. 36; Gov't C.A. Br. 14, 46.

In the early morning of June 20, 1997, a group of individuals including petitioner, George Tyrell Gibbs (petitioner's boyfriend), DeMario Hopkins, Dwayne Melvin, and Kenneth Davis gathered to search for a robbery target. The group was armed with a handgun, an assault rifle, and a "street sweeper" shotgun. Petitioner suggested to the group that they rob Eric Carter, another drug dealer and an acquaintance of hers. The group drove to Eric Carter's home. Petitioner approached the house but returned after a short time, telling the group that Eric Carter had asked her to return later. Petitioner then phoned Eric Carter for the ostensible purpose of arranging for the purchase of crack cocaine. After that, petitioner and her cohorts returned to Eric Carter's residence. Petitioner approached the door, and when Carter opened it, petitioner said the "she was sorry" and returned to the ve-

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[1] Pages 40-61 of the appendix to the petition do not reflect the page number.

hicle. Gibbs, Davis and Hopkins, each brandishing a firearm, then forced themselves into the residence. While Gibbs held his pistol to Eric Carter's head, the other intruders searched the residence. The group took a quantity of marijuana, several hundred dollars in cash, a wallet, and jewelry, and then fled. Pet. App. 37; Gov't C.A. Br. 15-16, 46-47; C.A. App. 511-515, 667.

After robbing Eric Carter's residence, the group drove to Clinton, North Carolina, and stayed in a motel there for the night. The next day, they went to the residence of Davis's girlfriend, where, joined by three other individuals, they planned to rob a bank in Garland, North Carolina, in order to obtain more money to purchase drugs for resale. The plan called for petitioner to drive the getaway vehicle. Petitioner, accompanied by Gibbs and Melvin, drove to the bank in the Chevrolet Blazer in which the group had been traveling. The other five conspirators drove to the bank in a Nissan Sentra. Two of the men entered the bank, armed with a handgun and an assault rifle. Fearing that they had been discovered, the group withdrew from the bank without completing the robbery and retreated to the Blazer to join petitioner and the two other occupants. DeMario Hopkins, Edward Ward, and Kenneth Davis got into the Blazer, and as the group left the area, they reloaded all of the firearms into the Blazer. Pet. App. 37-38; Gov't C.A. Br. 16-17, 47-48; C.A. App. 516-520.

Petitioner then suggested that the group go to Charlotte, North Carolina, where there "would be probably some easy robberies there when [they] got there." C.A. App. 521. In Charlotte, several of the conspirators robbed two white males of a small quantity of cocaine. In addition, they sold a portion of the mari-

juana that they had stolen from Eric Carter. Pet. App. 38; Gov't C.A. Br. 17; C.A. App. 525-526.

On June 26, 1997, petitioner and Gibbs returned to Fayetteville. They were arrested later that day. Gov't C.A. Br. 17; C.A. App. 526-527.

2. On March 5, 1998, petitioner was indicted on one count of conspiracy to distribute and to possess with the intent to distribute crack cocaine, cocaine powder, heroin, and marijuana, in violation of 21 U.S.C. 846 (Count 1). The 175 overt acts alleged in the conspiracy count included the June 20, 1997, home robbery of Eric Carter, and the attempted robbery of the Garland bank the following day. Both overt acts alleged that the perpetrators were armed with various types of firearms and identified petitioner as a participant. Pet. App. 71, 77.

In addition, petitioner was charged on two counts of using and carrying a firearm during and in relation to a drug trafficking offense, in violation of 18 U.S.C. 924(c) (Counts 5 and 6). Pet. App. 109-110. At the time of the alleged offenses, that statute provided that, "[w]hoever, during and in relation to any crime of violence or drug trafficking crime * * * uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime, be sentenced to imprisonment for five years." 18 U.S.C. 924(c)(1) (1994). The statute also provided that, "[i]n the case of his second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for twenty years," and that no "term of imprisonment imposed under this subsection [shall] run

concurrently with any other term of imprisonment." *Ibid.*[2]

Both of the Section 924(c) counts alleged as the predicate drug trafficking offense the conspiracy charged in Count 1 of the indictment, and both were based on the events that took place "[o]n or about" June 20, 1997. Pet. App. 109-110. Count 6 concerned the robbery of Eric Carter's residence on June 20, 1997, and Count 5 concerned the attempted robbery of a bank in Garland, North Carolina, the next day. Gov't C.A. Br. 46-48.

3. The jury found petitioner guilty on both Section 924(c) counts, but was unable to reach a verdict on the conspiracy count, resulting in the entry of a mistrial on that charge. Pet. App. 34. Petitioner moved for a judgment of acquittal on the firearms counts, contending that her Section 924(c) convictions could not stand without a conviction on the predicate drug trafficking charge. The district court denied the motion. Pet. App. 32-39. At sentencing, petitioner, although acknowledging that Fourth Circuit decisions were to the contrary, objected to the imposition of a consecutive 20-year sentence on the second Section 924(c) count on the ground that a number of other circuits do not permit convictions on multiple Section 924(c) counts tied to a single predicate drug trafficking offense. C.A. App. 1590. The district court rejected that argument, and in accordance with Fourth Circuit precedent, imposed a five-year

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[2] Effective November 13, 1998, Section 924(c) was amended to its present form. Act of Nov. 13, 1998, Pub. L. No. 105-386, § 1, 112 Stat. 3469. Among other revisions to Section 924(c), the 1998 amendment increased the penalty for a second or subsequent conviction from a 20-year term of imprisonment to a 25-year minimum term.

term of imprisonment on Count 5 and a consecutive 20-year term on Count 6. *Id.* at 1591.

4. On appeal, petitioner again argued that she could not be convicted and sentenced on two Section 924(c) counts arising from a single predicate drug trafficking offense. The court of appeals rejected that claim. The court observed that a "number of other circuits" agreed with petitioner's view of Section 924(c), but held that it had "already reached the issue and decided it in a manner contrary to [petitioner's] position." Pet. App. 12 (citing *United States* v. *Camps*, 32 F.3d 102 (4th Cir. 1994), cert. denied, 513 U.S. 1158 (1995).[3]

ARGUMENT

Petitioner renews her contention that the district court erred in imposing consecutive sentences on her two Section 924(c) convictions because the two counts were predicated on a single drug trafficking offense. Review of that question is not warranted.

1. Petitioner is correct that the courts of appeals are divided on whether a single predicate offense can support more than one Section 924(c) conviction and sentence. At the time of petitioner's trial, Section 924(c) imposed a five-year term of imprisonment for using or carrying a firearm during and in relation to a drug traf-

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[3] The court also rejected petitioner's claim that the failure of the jury to reach a verdict against her on the predicate drug trafficking charge precluded a conviction on the Section 924(c) counts. The court held, in agreement with the other courts of appeals that have addressed the issue, that Section 924(c) does not require a conviction on the predicate offense. Pet. App. 13. Instead, the court concluded, a showing that a reasonable jury could have found the defendant guilty on the predicate charge was sufficient. *Id.* at 13-14. Petitioner does not raise in this Court her claim that the absence of a conviction on the underlying predicate offense precludes a conviction under Section 924(c).

ficking offense, and imposed a consecutive 20-year term for a second or subsequent Section 924(c) conviction. 18 U.S.C. 924(c) (1994).[4] The Fourth Circuit in this case followed a previous decision in which it held that a "defendant who has 'used' or 'carried' a firearm on several separate occasions during the course of a single continuing offense * * * has committed several section 924(c)(1) offenses." *United States* v. *Camps*, 32 F.3d 102, 107 (4th Cir. 1994), cert. denied, 513 U.S. 1158 (1995). The Eighth Circuit agrees with the Fourth Circuit's approach. See *United States* v. *Lucas*, 932 F.2d 1210, 1223 (8th Cir.), cert. denied, 502 U.S. 869 (1991).

The majority of the courts of appeals have adopted the contrary view. Those courts have held that multiple Section 924(c) convictions cannot be based on a single predicate offense. See *United States* v. *Anderson*, 59 F.3d 1323, 1334 (D.C. Cir.) (en banc) (applying rule of lenity and holding that "only one § 924(c)(1) violation may be charged in relation to one predicate crime"), cert. denied, 516 U.S. 999 (1995); *United States* v. *Lindsay*, 985 F.2d 666, 674 (2d Cir.), cert. denied, 510 U.S. 832 (1993); *United States* v. *Privette*, 947 F.2d 1259, 1262 (5th Cir. 1991), cert. denied, 503 U.S. 912 (1992); *United States* v. *Sims*, 975 F.2d 1225, 1233 (6th Cir. 1992), cert. denied, 507 U.S. 932 (1993); *United States* v. *Smith*, 924 F.2d 889, 894

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[4] Although Section 924(c) has been amended since petitioner's indictment and trial, see note 2, *supra*, the amendment does not affect the issue in this case. In its amended form, the statute continues to apply to "any person who, during and in relation to any crime of violence or drug trafficking crime * * * uses or carries a firearm," and continues to impose a mandatory consecutive term of imprisonment—now of 25 years—"[i]n the case of a second or subsequent conviction." 18 U.S.C. 924(c)(1)(A) and (C).

(9th Cir. 1991); *United States* v. *Hamilton*, 953 F.2d 1344, 1346 (11th Cir.), cert. denied, 506 U.S. 871 (1992).[5]

2. Despite the conflict among the courts of appeals, this Court's review is not warranted. On August 24, 1999, more than one year after the indictment was returned in this case, the Assistant Attorney General for the Criminal Division issued a policy memorandum captioned "Multiple Convictions and Sentences Under 18 U.S.C. § 924(c)." App. A, *infra*, 1a-4a. Noting the conflict among the courts of appeals, the policy memorandum instructs United States Attorneys not to charge multiple Section 924(c) counts based on a single predicate offense. Rather, prosecutors "are instructed in all future cases to adopt the practice of basing each Section 924(c) count in an indictment upon a separate predicate offense." *Id.* at 3 a. The same policy is also reflected in the Department of Justice's Federal Firearms Manual, which advises prosecutors to draft indictments so that each Section 924(c) count is based on a separate predicate offense. United States Dep't of Justice, Office of Legal Education, *Federal Firearms Manual* § 4.25, at 192-193 (3d ed. 2001); App. B, *infra*, 7a.

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[5] Petitioner asserts (Pet. 11) that the government has repeatedly conceded in the courts of appeals "that the use of more than one gun will not support multiple counts under § 924(c)(1) for the use of a firearm during a single drug trafficking crime." The question in this case, however, is not whether each firearm used in a drug trafficking crime can support a separate Section 924(c) conviction. Instead, the question is whether each distinct use of a firearm—whether the same firearm or a different one—can support a separate Section 924(c) conviction, even if each distinct use occurs during the course of a single predicate drug trafficking offense.

Although the prosecution in this case predated issuance of the policy memorandum, the government is unaware of any prosecution after the policy was adopted in which multiple Section 924(c) counts have been charged based upon a single predicate offense. We anticipate that prosecutors will continue to follow those instructions and will base each Section 924(c) charge on a separate predicate offense. As a result, the conflict among the approaches of the courts of appeals is of little and diminishing continuing significance, and does not require this Court's resolution. The Court has denied petitions for certiorari raising the same issue in other cases in which the prosecutions predated establishment of the Department's policy. See *Scott* v. *United States*, 531 U.S. 1010 (2000) (No. 99-10053); *Wilkerson* v. *United States*, 528 U.S. 927 (1999) (No. 98-9595).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

THEODORE B. OLSON
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DECEMBER 2002

APPENDIX A

[SEAL OMITTED]

August 24, 1999

MEMORANDUM

To: All United States Attorneys, First Assistant United States Attorneys, and Criminal Division Section Chiefs and Office Directors

From: James K. Robinson /s/ JKR
Assistant Attorney General

Subject: Multiple Convictions and Sentences Under 18 U.S.C. § 924(c)

As amended in November 1998, 18 U.S.C. § 924(c) prohibits, *inter alia*, using or carrying a firearm during and in relation to any federal crime of violence or drug trafficking crime. The sentencing formula under this Section provides, among other things, for a mandatory minimum five-year term for a first offense and a mandatory minimum consecutive 25-year term in the case of a second or subsequent conviction. In *Deal* v. *United States*, 508 U.S. 129 (1993), the Supreme Court held that such consecutive sentences must be imposed on the basis of multiple convictions under Section 924(c) even when those convictions result from a single criminal proceeding.

The courts of appeals, however, are divided on the question whether the proper unit of prosecution under Section 924(c) is the using/carrying of a firearm or the commission of the predicate offense. Under the former theory, a single continuing drug trafficking conspiracy could support multiple using or carrying convictions and the imposition of consecutive sentences. Under the latter theory, each using/carrying count must be supported by a separate predicate crime.

The majority of the courts of appeals that have addressed the issue have reasoned that Section 924(c) emphasizes the relationship between the firearm and the underlying crime rather than the individual acts of using or carrying, and that, consequently, the predicate offense is the proper unit of prosecution. *See, e.g., United States v. Anderson*, 59 F.3d 1323, 1334 (D.C. Cir. 1995) (en banc) (relying upon rule of lenity); *United States v. Lindsay*, 985 F.2d 666, 672-676 (2d Cir.) (same), *cert. denied*, 510 U.S. 832 (1993); *United States v. Privette*, 947 F.2d 1259, 1262-1263 (5th Cir. 1991) (relying upon statutory interpretation), *cert. denied*, 503 U.S. 912 (1992); *United States v. Sims*, 975 F.2d 1225, 1233-1236 (6th Cir. 1992) (same), *cert. denied*, 507 U.S. 932 (1993); *United States v. Cappas*, 29 F.3d 1187, 1189 (7th Cir. 1994) (same), *cert. denied*, 513 U.S. 1158 (1995); *United States v. Fontanilla*, 849 F.2d 1257, 1258-1259 (9th Cir. 1988); *United States v. Moore*, 958 F.2d 310, 312-314 (10th Cir. 1992); *United States v. Hamilton*, 953 F.2d 1344, 1346 (11th Cir.), *cert. denied*, 506 U.S. 871 (1992).

Two circuits, however, have adopted the contrary approach and have held that a single predicate offense, such as a drug trafficking conspiracy, will support multiple Section 924(c) counts and consecutive sentences whenever the using or carrying occurs on different occasions. *See United States v. Camps*, 32 F.3d 102 (4th Cir. 1994), *cert. denied*, 513 U.S. 1158 (1995); *United States v. Edwards*, 994 F.2d 417, 423-424 (8th Cir.), *cert. denied*, 510 U.S. 1014 (1993). Recently, a petition for a writ of certiorari, challenging the imposition of multiple Section 924(c) convictions and consecutive sentences on the basis of a single drug trafficking conspiracy, has highlighted the conflict among the circuits on this

issue. *See Wilkerson v. United States*, No. 98-9595, petition for certiorari filed June 1, 1999. The petition in *Wilkerson* is now pending disposition by the Supreme Court.

After careful evaluation of the question, it is the Department's position that indictments henceforth should be charged in accordance with the majority position taken by the courts of appeals.[1] Consequently, United States Attorneys' Offices are instructed in all future cases to adopt the practice of basing each Section 924(c) count in an indictment upon a separate predicate offense. Where an indictment charging multiple Section 924(c) counts on the basis of a single predicate conspiracy offense is pending trial, prosecutors should consider either superseding the indictment so as to allege a single Section 924(c) count based upon the entire conspiracy or, alternatively, seeking the dismissal of subsequent counts.

In instances where a firearm is used or carried during an ongoing drug trafficking conspiracy, prosecutors will frequently be able to charge separate Section 924(c) counts, where appropriate, by parsing the continuing conspiracy into separate drug trafficking offenses and linking each "using" or "carrying" to the different substantive counts. This suggestion, however, does not constitute an expression of Criminal Division policy

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[1] In U.S. Department of Justice Office of Legal Education, *Federal Firearms Offenses*, (July 1995, revised June 1999), the authors advised that U.S. Attorneys should desist from the practice of basing multiple Section 924(c) counts on a single drug trafficking predicate offense and, instead, should base each Section 924(c) count upon a different predicate crime. See *Federal Firearms Offenses*, § 4-23 (1995).

that seeking an indictment on multiple Section 924(c) counts is expected as a matter of routine practice.

Should you have any questions concerning this policy or its implementation, please contact John De Pue or Nancy Oliver of the Terrorism and Violent Crime Section (202) 514-0849.

APPENDIX B

4.25 Separate charges based on the use of different firearms or firearms on temporally discrete occasions

As suggested in the preceding section, most of the courts that have addressed the question are in agreement that the use of multiple firearms during and in relation to a single predicate crime constitutes a single violation of § 924(c). *See, e.g., Pena-Lora*, 225 F.3d at 32 ("the imposition of consecutive sentences under subsection 924(c) for using multiple weapons during a single crime of violence would impinge upon fundamental 'double jeopardy' principles"); *United States v. Cappas*, 29 F.3d 1187, 1189 (7th Cir. 1994) (collecting cases); *United States v. Taylor*, 13 F.3d 986, 993 (6th Cir. 1994); *United States v. Lindsay*, 985 F.2d 666, 674 (2d Cir. 1993); *United States v. Martinez*, 967 F.2d 1343, 1348 (9th Cir. 1992) (quoting *United States v. Smith*, 924 F.2d 889, 894 (9th Cir. 1991) ("'We, along with other circuits, have required that each § 924(c) charge be based on a separate predicate offense'".)); *United States v. Moore*, 958 F.2d 310, 313-14 (10th Cir. 1992); *United States v. Privette*, 947 F.2d 1259, 1262 (5th Cir. 1991). *Compare United States v. McManus*, 23 F.3d 878, 884 (4th Cir. 1994) (multiple § 924(c) convictions proper where supported by separate drug trafficking offenses). *But see United States v. Lucas*, 932 F.2d 1210, 1223-23 (8th Cir. 1991) (court authorized multiple § 924(c) convictions for the use of more than one firearm during a single drug trafficking offense when the different firearms played separate roles in the crime). As explained in the preceding section, in cases where different types of firearms are employed during the commission of a single predicate offense, the mandatory minimum sen-

tence for the § 924(c) violation is governed by the firearm carrying the heaviest penalty.

The unit of prosecution issue assumes added complexity in cases where the defendant uses firearms on different occasions during the course of an ongoing narcotics conspiracy. Two courts of appeals that have considered such facts have held that, in charging § 924(c) violations, the unit of prosecution is the use of the firearm, rather than the underlying narcotics crime or crime of violence. Consequently, these cases hold that a single predicate offense, such as conspiracy to distribute narcotics, will support multiple § 924(c) counts and cumulative mandatory sentences when each use of a firearm occurs on a different occasion. *See United States v. Camps*, 32 F.3d 102, 106-09 (4th Cir 1994) ("A defendant who has 'used' or 'carried' a firearm on several separate occasions during the course of a single continuing offense, therefore has committed several § 924(c) offenses."); *United States v. Edwards*, 994 F.2d 417, 423-24 (8th Cir. 1993) ("'each separate use of a firearm in relation to a . . . drug trafficking crime is punishable under § 924(c) regardless of whether other § 924(c) charges are related to the same predicate offense'"). *See also United States v. Mabry*, 3 F.3d 244, 250 (8th Cir. 1993) (two different firearms used over thirteen months in furtherance of same conspiracy); *United States v. Canterbury*, 2 F.3d 305, 307 (8th Cir. 1993).

In contrast, most of the courts of appeals that have addressed the issue have reasoned that § 924(c) "emphasizes the relationship between the firearms and the underlying drug-trafficking crime, rather than the individual firearms themselves," and that, consequently, the predicate offense, not the firearm, is the unit of

prosecution. *United States v. Taylor*, 13 F.3d 986, 993 (6th Cir. 1994). Under this approach, as the unit of prosecution is based upon the underlying predicate offense, a single firearm can support multiple convictions as long as each is based upon a different crime. *See United States v. Morris*, 247 F.3d 1080 (10th Cir. 2001) (a single predicate crime cannot sustain multiple § 924(c) convictions for using and brandishing); *United States v. Dahlman*, 13 F.3d 1391, 1401 (10th Cir. 1993). Under this analysis, each § 924(c) must, therefore, be based upon a different predicate offense. A single continuing conspiracy—even one that embraces multiple discrete firearms transactions—is insufficient to support multiple § 924(c) counts. See, *United States v. Tolliver*, 61 F.3d 1189, 1222 (5th Cir. 1995); *United States v. Anderson*, 59 F.3d 1323, 1334 (D.C. Cir.) (en banc) (invoking rule of lenity), *rev'g* 39 F.3d 331 (D.C. Cir. 1994); *Taylor*, 13 F.3d at 992; *United States v. Hamilton*, 953 F.2d 1344, 1346 (11th Cir. 1992) (reversing convictions on multiple § 924(c) counts where based upon single conspiracy predicate).

On August 24, 1999, the Assistant Attorney General for the Criminal Division issued a memorandum captioned "Multiple Convictions and Sentences under 18 U.S.C. § 924(c)," which appears as Appendix A of this Manual. The Memorandum instructed all United States Attorneys to adopt the majority approach of basing each § 924(c) count in an indictment upon a separate predicate offense. It also advised that, where a firearm is used or carried during an ongoing drug trafficking conspiracy, prosecutors should, where appropriate, parse the conspiracy into separate drug trafficking offenses and link each "using" or "carrying" incident to the different substantive counts.

Finally, as an exception to this "unit of prosecution" rule, several courts of appeals have held that, where the occurrence of multiple predicate offenses is simultaneous and based on virtually the same conduct, the offenses will support only one § 924(c) conviction. In *United States v. Finley*, 245 F.3d 199 (2d Cir. 2001), a divided Second Circuit, invoking the rule of lenity, set aside the consecutive § 924(c) sentence imposed as the result of the defendant's conviction for possessing a narcotic with intent to distribute. The possession conviction was predicated upon the defendant's retaining a portion of a drug cache immediately following the consummation of a distribution offense. The panel majority justified its action by explaining that:

> where a defendant is charged with the continuous, constructive possession of a firearm in furtherance of a sale of a part of a quantity of narcotics possessed, coupled with the continued possession of the remainder immediately following the sale, Congressional intent is not sufficiently clear to compel [the imposition of consecutive § 924(c) sentences].

Id. at 208; *see also United States v. Wilson*, 160 F.3d 732, 749 (D.C. Cir. 1998) (multiple offenses, based upon a single homicidal act by use of a firearm, will support only one sentence under § 924(c)); *United States v. Johnson*, 25 F.3d 1335, 1338 (6th Cir. 1994) (en banc) (possession of one or more firearms in conjunction with predicate offenses involving simultaneous possession of different drugs should constitute only one offense under § 924(c)), *rev'd on other grounds*, 529 U.S. 53 (2000). *But see Finley*, *id.* at 209 (Winter, J. dissenting) (noting that nothing in the language of § 924(c) requires that the predicate offenses be separated by a particular amount of time). Consistent with the August 24, 1999,

Memorandum discussed above, we do not encourage prosecutors to generate multiple § 924(c) counts by charging a single criminal act as multiple predicate offenses or parsing the single employment of a firearm in connection with a single predicate offense into multiple § 924(c) counts.